REMARKS

Claims 1, 3 through 10, 12 through 16, 41, and 45 through 49 are pending in this Application. Claims 2, 11, 29-33, and 42 were previously canceled without prejudice or disclaimer. Claims 17 through 28, 34 through 40, 43, and 44 stand withdrawn from consideration pursuant to the provisions of 37 C.F.R. §1.142(b). As no claims are amended, it is clear that no new matter is introduced.

The Final Office Action mailed February 7, 2012 rejected claims 1, 3 through 10, 12 through 16, 41, and 45 through 49 as obvious under 35 U.S.C. §103(a) based on Rao et al. (US 6,978,453) in view of "SynchML Meta-Information DTD" ("Synch") and Szeto (US 7,188,143).

The rejection of claims 1, 3 through 10, 12 through 16, 41, and 45 through 49 under 35 U.S.C. §103(a) is respectfully traversed.

Independent claim 1 recites, *inter alia*, "receiving at an electronic device an executable command **specifying execution of an unidentified executable** on first data **without specifying which executable should be used** for the first data" (Emphasis Added). Independent claim 41 recites, *inter alia*, "receiving an executable command **specifying execution of an unidentified executable** on first data **without specifying which executable should be used** for the first data" (Emphasis Added). Independent claim 49 recites, *inter alia*, "receive an executable command **specifying execution of an unidentified executable** on first data **without specifying which executable should be used** for the first data" (Emphasis Added).

Thus, independent claims 1, 41, and 49 have been clarified by reciting that the received executable command specifies execution of an unidentified executable on first data but does not

specify which executable is to be used for the first data.   The unidentified executable will be

identified later, after a determination of the first data and a content type of the first data from

metadata and determining to identify an executable using the content type.

This claim feature is admittedly missing from Rao and Sync, the Examiner relying on

Szeto for a disclosure of this claim feature.   Specifically, the Examiner relied on Fig. 12A, col.

1, lines 55-58, col. 7, lines 48-53, and col. 12, line 66 to col. 13, line 16 of Szeto for the asserted

teaching of "without specifying execution of an unidentified executable for the first data," which,

presumably, the Examiner would employ against the amended claim language

The cited portions of Szeto are as follows:

It should be noted that software intended for implementing an instruction set in an
instant messaging environment may be generally referred to as an instant
messenger application or IM application.

The environment may also be specified by the user of the application. By way of
example and without limitation, instant messaging environments may be
implemented using the wireless application protocol, XML, VRML, or any other
appropriate public or private standard.

FIG. 12A is a flow chart illustrating the control and execution of IM applications
in an instant messaging system, in accordance with one embodiment of the present
invention. In step 1202, IM client 202 (FIG. 2 or 10) evaluates an IM message.
From the IM message, the IM client 202 determines the application type (i.e.,
movie trailer, game, animated cartoon, advertisement, Flash presentation, etc.) in
step 1204. Using an identifier, the IM application is retrieved in step 1206. In step
1208, a decision is made as to whether a supporting application is required such as
a media player (Real Player, Windows Media Player), content viewer (Adobe
Illustrator, Reader, etc.), or other media-based display application. If required, the
supporting application is launched in step 1210. If a supporting application is not
required or if the supporting application has been launched, then the IM
application is implemented/executed in step 1212. Alternative embodiments
pertinent to the type of IM application implemented are shown in FIGS. 12B
through 12D.

As is clear from the above-cited portions of Szeto, there is no disclosure, or even a

suggestion, of "receiving at an electronic device an executable command **specifying execution of**

an unidentified executable on first data **without specifying which executable should be used** for the first data." The Examiner asserted that "the supporting application is not identified by an initial command for IM message, wherein the initial command would only identify an application for rendering the IM message, and only upon further examination is the need for the supporting application determined/identified via application type identifier; therefore, by combining the determination/identifying the need of the supporting application with <u>Rao</u>'s mobile phone/PDA/electronic device communicating over network via XML protocol including the first data, the resulting combination of the references further teaches the above claimed feature." Applicants respectfully disagree.

Fig. 12A of Szeto illustrates the process whereby an IM message is executed. First, the IM message must be evaluated at step 1202. Then, an application type is determined at step 1204 from the IM message. Through the use of an identifier, the IM application is retrieved at step 1206 and, in step 1208, a determination is made as to whether a supporting application is required. The application type (e.g., movie trailer, cartoon, game, advertisement) is different from the "supporting" application (e.g., Real Player, Windows Media Player). However, the initial command, i.e., the IM message, does identify an application that will execute some unidentified executable and, thereby, does specify "**which executable should be used** for the first data." Since independent claims 1, 41 and 49 recite that the electronic device receives an executable command **specifying execution of an unidentified executable** on first data **without specifying which executable should be used** for the first data, i.e., the executable command does not specify which executables should be used and the meaning of the command depends upon the content type of the data which it identifies (See paragraph [0047] of the present specification, for example), it is clear that Szeto is inapplicable. To whatever extent the IM

message in Szeto may be interpreted as a command and the application type (e.g., movie trailer, cartoon, game, advertisement) may be interpreted as a content type of the data, which it identifies, such identification results in the supporting application that will be employed to render the application type. Therefore, it is clear that the IM message (command) in Szeto does specify **which executable should be used** (the supporting application). This is in direct contrast to the claimed invention, whereby "an executable command **specifying execution of an unidentified executable** on first data **without specifying which executable should be used** for the first data"" is received.

For this reason alone, i.e., none of the applied references, or any combination thereof, teaches or suggests the claim feature of "receiving at an electronic device an executable command **specifying execution of an unidentified executable** on first data **without specifying which executable should be used** for the first data," no *prima facie* case of obviousness has been established regarding the subject matter of claims 1, 3 through 10, 12 through 16, 41, and 45 through 49.

At page 3 of the Final Office Action of February 7, 2012, the Examiner asserted that, when interpreted in light of the present specification, and the Examiner's best understanding, the unidentified executable is to be identified via the metadata of the first data.

While the Examiner's understanding is not entirely wrong, since the metadata of the first data is employed in determining the identity of the unidentified executable, the claimed invention requires more than merely identifying the unidentified executable via the metadata of the first data. Rather, there are intermediate steps that the Examiner does not appear to be taking into account. Using independent claim 1 as exemplary, first there is a receipt of an executable command. This executable command specifies execution of an executable, as yet unidentified,

on first data without specifying which executable should be used for the first data. Thus, at this point, there is a command that an executable should be executed on first data, but we do not, as yet, know the identity of the executable. Next, a determination of content type of the first data is made, employing metadata of the first data to make this determination. Then, using the content type previously determined from the metadata of the first data, an executable using the content type is identified. Finally, the first data is operated on using the executable identified in the previous step.

Thus, there are intermediate steps between determining metadata of the first data and the identification of the unidentified executable that the Examiner's simplistic interpretation does not take into account. Accordingly, even if Rao teaches identifying an executable for data via SyncML, and Synch teaches the use of metadata for SyncML, wherein metadata is data about data, and Szeto teaches identifying an unidentified executable via the identifier of first data, assertions with which Applicants do not agree, none of the applied references, or any combination thereof, teaches or suggests the particular series of steps recited in independent claims 1, 41, and 49

Moreover, even if Szeto disclosed what the Examiner has asserted, which it does not, the proposed combination of Rao, Sync, and Szeto is still improper. While Rao and Sync are directed to systems employing SyncML DM for updating firmware in mobile handsets and other devices, and Rao discloses employing enhancements to SyncML DM specifications, Szeto is directed to a completely different system, i.e., messenger-controlled applications in an Instant Messaging (IM) environment.

The person of ordinary skill in the art seeking to modify Rao/Sync in some manner would clearly not have been led to the IM arts. In particular, the determination, from an IM, of an

application type, the retrieval of an IM application, and the determination as to whether a supporting application is required, as in Szeto, would have no place in Rao's system. The person of ordinary skill in the art would simply not have been led, from a teaching of determining application types, retrieving an IM application, and determining the need for a supporting application in an IM system, to modify the mobile handset 107 of Rao such that an update command for executing data associated with firmware update data in the mobile handset is executed on the firmware update data **without specifying which executable should be used** for the firmware update data. Any conclusion to the contrary could only have been arrived at through the exercise of impermissible hindsight gleaned from knowledge of Applicants' disclosure.

The claim feature of "receiving at an electronic device an executable command **specifying execution of an unidentified executable** on first data **without specifying which executable should be used** for the first data," was simply not known in the prior art. There would have been no reason to modify any of the applied references, or any combination thereof, to include the feature of specifying execution of an unidentified executable without specifying which executable should be used because the components in the applied references are not concerned with any executable command that does not specify which executables should be used and whether the meaning of the command would depend on the identified content type.

A proper rationale for determining obviousness requires some "articulated reasoning with some rational underpinnings" *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007). The Examiner has not provided any such articulated reasoning with some rational underpinnings. The mere assertion, at page 5 of the Final Office Action, that Rao teaches receiving an executable command to execute on first data, and that Szeto teaches "without

specifying execution of an unidentified executable for the first data, and that, therefore, all of the claimed features are taught, is insufficient to establish a prima facie case of obviousness, within the meaning of 35 U.S.C. §103(a).

The Examiner has not explained, nor can he explain, any motivation for the proposed combination, because there is none. Persons of ordinary skill in the art would not have been led to modify either Rao or Sync, or the combination thereof, with any teaching of Szeto.   Szeto is so far removed from the subject matter of Rao and/or Sync as to constitute nonanalogous subject matter.   The test for analogous art outside an inventor's field of endeavor is whether the art pertains to the particular problem confronting the inventor.   *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).   It is clear that the IM system of Szeto is outside the field of endeavor of both Applicants and Rao/Synch.   Moreover, Szeto does not pertain at all to the problem confronting the inventors, *viz.*, the configuration of an electronic device, e.g., a mobile phone, such that a SyncML code is created that is suitable for performing a common process on a plurality of target devices that does not require specific adaptation for use with each device, i.e., to instruct an executable to be performed on particular data using SyncML code that can be re-used for other devices.   Accordingly, since Szeto constitutes nonanalogous art, it is improper to combine this reference with Rao and/or Sync in an attempt to reconstruct the claimed invention.

At page 4 of the Final Office Action of February 7, 2012, the Examiner asserted that Applicants' arguments appear to indicate the Szeto constitutes nonanalogous art.   The Examiner's understanding in this regard is correct.   Szeto does constitute nonanalogous art. Szeto is directed to systems related to messenger-controlled applications in an Instant Messaging (IM) environment.   This is completely nonanalogous to the systems of Rao and Sync employing SyncML DM for updating firmware in mobile handsets and other devices.

Szeto is clearly outside of Applicants' field of endeavor as the Instant Messaging environment of Szeto is completely outside of the realm of configuring electronic devices by executing executables on the device without identifying the executable.   Moreover, Szeto does not relate to the problem confronting Applicants, i.e., how to execute an executable on an electronic device without identifying the executable.   Szeto is also nonanalogous to the Rao and Sync systems, which are directed to systems employing SyncML DM for updating firmware in mobile handsets and other devices.

Thus, no *prima facie* case of obviousness has been presented regarding the subject matter of claims 1, 3 through 10, 12 through 16, 41, and 45 through 49.   Accordingly, the rejection of claims 1, 3 through 10, 12 through 16, 41, and 45 through 49 under 35 U.S.C. §103(a) is neither factually nor legally viable.   Therefore, withdrawal of this rejection is respectfully solicited.

At page 5 of the Final Office Action of February 7, 2012, the Examiner asserted that Appellants' arguments are directed to features that are not recited in the claims.   Applicants respectfully disagree.

In particular, the Examiner cited "configuration of an electronic device," such that a "SyncML code is created that is suitable for performing a common process on a plurality of target devices that does not require specific adaptation for use with each device."   However, this was language Applicants employed to describe, not the claimed invention, *per se*, but the type of problem with which Applicants were confronted so as to show that Szeto is not analogous art in that Szeto was confronted with an entirely different problem regarding Instant Messaging systems. Applicants did not, and do not, rely on "the configuration of an electronic device, e.g., a mobile phone, such that a SyncML code is created that is suitable for performing a common process on a plurality of target devices that does not require specific adaptation for use with each

device" as a distinguishing claim feature, but only to show that the problems confronting Applicants and Szeto were different. The claimed invention does, however, result in a solution to this problem.

Therefore, the present application overcomes the rejection of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, ability to combine references, assertions as to patentability of dependent claims) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions in the future.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

March 28, 2012   /Phouphanomketh Ditthavong/
Date   Phouphanomketh Ditthavong
                         Attorney for Applicants
                         Reg. No. 44658

                         Errol A. Krass
                         Attorney for Applicants
                         Reg. No. 60090

918 Prince Street
Alexandria, VA 22314
Tel. (703) 519-9951
Fax (703) 519-9958